

IC 24

TITLE 24. TRADE REGULATIONS; CONSUMER SALES AND CREDIT

IC 24-3

ARTICLE 3. REGULATED PRICES

IC 24-3-5

Chapter 5. Delivery Sales of Tobacco Products

IC 24-3-5-1

"Delivery sale"

Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual at a designated address.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-2

"Merchant"

Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-3

"Tobacco product"

Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-4

Requirements

Sec. 4. A merchant may not mail or ship tobacco products as part of a delivery sale unless, before mailing or shipping the tobacco products, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing tobacco products by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the tobacco product order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of tobacco products by delivery sale is a taxable event for purposes of IC 6-7-1 and IC 6-7-2;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-5

Mailing or shipping tobacco products requirements; penalties

Sec. 5. (a) A merchant who mails or ships tobacco products as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the tobacco products; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF TOBACCO PRODUCTS TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers tobacco products as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships tobacco products as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the tobacco products; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the tobacco products without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-6

Filing with the department of state revenue; compliance

Sec. 6. (a) A merchant shall, before mailing or shipping tobacco products as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships tobacco products as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the tobacco products were delivered.

(2) The brand name of the tobacco products that were delivered to the customer.

(3) The quantity of tobacco products that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

As added by P.L.253-2003, SEC.1.

IC 24-3-5-7

Pay taxes or provide notice; penalties

Sec. 7. (a) A merchant who delivers tobacco products to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1 and IC 6-7-2; or

(2) place a legible and conspicuous notice on the outside of the container in which the tobacco products are shipped.

The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these tobacco products have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these tobacco products, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these tobacco products."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other

remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

As added by P.L.253-2003, SEC.1.

IC 24-3-5-8

Civil penalties

Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells tobacco products by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

As added by P.L.253-2003, SEC.1.

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TITLE 24.

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